

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GEORGE AVALOS,

Plaintiff,

v.

SOUTHERN PACPIZZA, LLC, et al.,

Defendants.

Case No. 1:21-cv-00547-NONE-SAB

ORDER REQUIRING STATEMENT OF
DEATH TO BE SERVED ON SUCCESSOR
OR REPRESENTATIVE

(ECF No. 14)

TEN DAY DEADLINE

George Avalos (“Plaintiff”) filed this action on March 30, 2021. (ECF No. 1.) On July 29, 2021, counsel for Plaintiff filed a statement under Federal Rule of Civil Procedure 25(a)(1) suggesting the death of Plaintiff. (ECF No. 14.)¹

Rule 25(a)(1) provides for the dismissal of a party or an action if a motion for substitution is not made within ninety days after service of a statement noting the party’s death. Fed. R. Civ. P. 25(a)(1). The Ninth Circuit has held that there are two affirmative steps that trigger the running of the ninety-day period in Rule 25(a)(1). See Barlow v. Ground, 39 F.3d 231, 233 (9th Cir. 1994). First, a party must formally suggest the death of the party upon the record. Id. (citations omitted). Second, the suggestion of death must be served on parties in accordance with Rule 5 and served on nonparties in accordance with Rule 4. Id. (citation omitted); Fed. R.

¹ The Court notes that Plaintiff’s counsel has not filed such notice in another action before the undersigned brought by George Avalos, that currently has a findings and recommendations regarding a motion for default judgment pending. See Avalos v. Sandhu, Case No. 21-cv-00538-NONE-SAB.

1 Civ. P. 25(a)(3)).

2 Here, counsel for Plaintiff has filed a statement noting the death of Plaintiff upon the
3 record, but there is no indication that the statement has been served on Plaintiff's successor or
4 representative.

5 Accordingly, IT IS HEREBY ORDERED that:

- 6 1. Plaintiff's counsel shall file proof that the statement noting Plaintiff's death has
7 been served on Plaintiff's successor or representative within **ten (10) days** of
8 entry of this order;
- 9 2. A motion to substitute the successor in interest within **ninety (90) days** of the date
10 of service of the statement noting Plaintiff's death; and
- 11 3. The failure to comply with this order will result in the issuance of sanctions, up to
12 and including dismissal of this action.

13 IT IS SO ORDERED.

14 Dated: **July 30, 2021**

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16 UNITED STATES MAGISTRATE JUDGE
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